

**40 CFR Part 63**

[FRL-5193-1]

**National Emission Standards for Hazardous Air Pollutants (NESHAP); Secondary Lead Smelters; PVC in Feedstock****AGENCY:** Environmental Protection Agency (EPA)**ACTION:** Proposed rule; amendments.

**SUMMARY:** Notice is given that the EPA is considering amending the proposed rule for secondary lead smelters (59 FR 29750, June 9, 1994). Information gathered since proposal indicates that the amount of polyvinyl chloride (PVC) plastic contained in lead-acid battery scrap is declining and should be relegated to trace quantities within the next few years. Polyvinyl chloride in scrap is a precursor to hydrochloric acid emissions. The EPA is considering whether limits for hydrochloric acid contained in the proposal should be withdrawn.

**DATES:** *Comments.* Comments must be received on or before May 4, 1995.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A-92-43, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

*Docket.* Docket No. A-92-43 contains supporting information used in developing the proposed standards for secondary lead smelters (59 FR 29750, June 9, 1994). The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 in room M-1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 12 p.m. and 1 to 3 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning the proposed standards and the materials discussed in this notice contact Mr. Phil Mulrine at (919) 541-5289, Metals Group, Emissions Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** Since the proposal of standards for secondary lead

smelters (59 FR 29750, June 9, 1994), the EPA has continued to gather information relevant to the rulemaking.

In the notice of proposed standards for secondary lead smelters, the EPA stated, "All smelting furnaces that process broken batteries are potential sources of HCl and Cl<sub>2</sub> [chloride] emissions. Many used lead-acid batteries contain polyvinyl chloride (PVC) plastic separators between the battery grids, although the use of PVC plastic as a separator material has been discontinued by most battery manufacturers. These separators are typically not removed from the lead-bearing parts of the battery during the battery breaking and separation process. When the PVC plastic is burned in the smelting furnace, the chlorides are released as HCl, Cl<sub>2</sub>, and chlorinated hydrocarbons" (59 FR 29754).

Information gathered recently relevant to this specific topic indicate that the number of used lead-acid batteries in the scrap inventory that contain PVC plastic separators has declined sharply in recent years from approximately 1 percent of the total available scrap in 1990 to less than 0.1 percent in 1994 (Docket No. A-92-43, Item No. IV-D-32 and IV-D-34). This trend is expected to continue due to the fact that these separators are no longer manufactured in the United States (Docket No. A-92-43, Item No. IV-D-38). No other source of chlorides has been identified in the feedstocks to these furnaces. Consequently, the EPA also expects emissions of HCl and Cl<sub>2</sub> to follow a similar decline.

In light of this new information, the EPA is reconsidering the conclusion that secondary lead smelters will continue to be a source of HCl and Cl<sub>2</sub> emissions and the need to regulate these pollutants from this source category. At this time, the EPA is considering withdrawing the HCl/Cl<sub>2</sub> emission standards and associated monitoring requirements from the proposed NESHAP. The EPA welcomes comment on this new information and the ramifications it may have on the final rule.

Dated: April 7, 1995.

**Mary D. Nichols,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 95-9378 Filed 4-18-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 180**

[OPP-300385; FRL-4947-9]

**Potassium Oleate, Oxytetracycline, and S-ethyl diisobutylthiocarbamate; Proposed Tolerance Actions****AGENCY:** Environmental Protection Agency (EPA or "the Agency")**ACTION:** Proposed rule.

**SUMMARY:** For each of the pesticides subject to the actions listed in this proposed rule, EPA has completed the reregistration process and issued a Reregistration Eligibility Document (RED). In the reregistration process, all information to support a pesticide's continued registration is reviewed for adequacy and, when needed, supplemented with new scientific studies. Based on the RED tolerance assessments for the pesticide chemicals subject to this proposed rule, EPA is proposing the following actions: to delete the term potassium oleate from the tolerance exemption for "potassium oleate and related C<sub>12</sub>-C<sub>18</sub> fatty acid potassium salts," to increase the tolerance for oxytetracycline on peaches, and for the tolerance "S-ethyl diisobutylthiocarbamate," to change the chemical name to the common name "butylate", to delete certain terms, and to change commodity definitions to accord with Table II of Subdivision O.

**DATES:** Written comments, identified by the OPP document control number [300385], must be received on or before May 19, 1995.

**ADDRESSES:** By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202. The contacts for the specific chemicals are: Ben Chambliss (oxytetracycline), (703) 308-8174, David Chen (potassium oleate), (703) 308-8017, Paul Parsons (butylate), (703) 308-8037.

**I. Legal Authorization**

The Federal Food, Drug, and Cosmetic Act (FFDCA) [21 U.S.C. 301 et seq.] authorizes the establishment of tolerances (maximum legal residue levels) and exemptions from the

requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 [21 U.S.C. 346(a)]. Without such tolerances or exemptions, a food containing pesticide residues is considered to be "adulterated" under section 402 of the FFDCA, and hence may not legally be moved in interstate commerce [21 U.S.C. 342]. To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" [21 U.S.C. 346a(b)]. For a pesticide to be sold and distributed the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act [FIFRA, 7 U.S.C. 136 et seq.].

In 1988, Congress amended FIFRA and required EPA to review and reassess the potential hazards arising from currently registered uses of pesticides registered prior to November 1, 1984. As part of this process, the Agency must determine whether a pesticide is eligible for reregistration and if any subsequent actions are required to fully attain reregistration status. EPA has chosen to include in the reregistration process a reassessment of existing tolerances or exemptions from the need for a tolerance. Through this reassessment process, EPA can determine whether a tolerance must be amended, revoked, or established, or whether an exemption from the requirement of one or more tolerances must be amended or is necessary.

The procedure for establishing, amending, or repealing tolerances or exemptions from the requirement of tolerances is set forth in the Code of Federal Regulations 40 CFR parts 177 through 180. Pursuant to 40 CFR 180.32, EPA is proposing the amendment of the following tolerances. The Administrator of EPA or any person may initiate an action proposing to establish, amend, revoke, or exempt a tolerance for a pesticide registered for food uses. The proposal must explain the grounds for such a proposed action and will be published as a public notice. Each petition or request for a new tolerance, an amendment to an existing tolerance, or a new exemption from the requirement of a tolerance must be accompanied by a fee. Current Agency policy on tolerance actions identified during the reregistration process is to waive the payment of fees if the tolerance action concerns revision or revocation of an established tolerance, or if the proposed exemption from the requirement of a tolerance requires the

concurrent revocation of an approved tolerance. Comments submitted in response to the Agency's published proposals are reviewed; the Agency then publishes its final determination regarding the specific tolerance actions.

## II. Chemical-Specific Information and Proposed Actions

### A. Potassium Oleate: Deletion of Term

1. *Regulatory background.* Prior to March 1989, the Agency classified potassium salts of fatty acids [ $C_{12}$ - $C_{18}$  saturated and unsaturated fatty acids], potassium laureate, potassium myristate, potassium oleate, and potassium ricinoleate as separate active ingredients. In March 1989, the Agency decided to treat all potassium salts of fatty acids, and all combinations of these chemicals, as a single active ingredient because these active ingredients tend to exist as mixtures in pesticide products. In May 1992, EPA revisited its March 1989 decision. EPA concluded that for registration purposes only potassium salts of  $C_{12}$ - $C_{18}$ , saturated and unsaturated fatty acids, would be treated as a single active ingredient and that any other chain length (either shorter or longer) should be considered to be a different active ingredient.

Because of the generally low toxicity of potassium salts and the acceptability of naturally occurring fatty acids in food, in 1982 EPA determined that a tolerance is not needed to protect the public health and established an exemption from the requirement of a tolerance for potassium oleate and related salts of fatty acids (47 FR 1379).

2. *Proposed action.* Currently, under 40 CFR 180.1068, EPA has established exemptions from the requirement of tolerances for potassium oleate and related  $C_{12}$ - $C_{18}$  fatty acids of potassium salts for residues in or on all raw agricultural commodities. Because EPA now treats all  $C_{12}$ - $C_{18}$  fatty acids of potassium salts as a single active ingredient, and potassium oleate is a  $C_{18}$ -fatty acid, a separate term for potassium oleate is no longer needed. Therefore, EPA proposes that the term potassium oleate be deleted from 40 CFR 180.1068.

### B. Oxytetracycline: Amendment of the Tolerance on Peaches

1. *Regulatory background.* Tolerances of 0.35 and 0.1 ppm currently exist for the bactericide/fungicide oxytetracycline in or on pears and peaches, respectively, from foliar treatment or injection (40 CFR 180.337). The Agency's 1988 Registration Standard for oxytetracycline concluded

that EPA had adequate data to support registered uses on pears and peaches, including nectarines. However, an evaluation of available data indicate that residue uptake in peaches could exceed the existing 0.1 ppm tolerance level but would be less than 0.35 ppm. Therefore, EPA is proposing that the oxytetracycline tolerance for peaches be increased from 0.1 ppm to 0.35 ppm.

To determine whether a 0.35 ppm tolerance level is protective of the public health, EPA considered the following information:

a. A 2-year chronic feeding study in Osborne-Mendel rats with a No Observed Effect Level (NOEL) of 3,000 ppm, approximately 150 milligrams (mg)/kilogram (kg)/day (highest dose tested).

b. A 2-year chronic feeding study in Sprague-Dawley rats with a NOEL of 1,000 ppm, approximately 50 mg/kg/day (highest dose tested).

c. A 2-year chronic feeding study in dogs with a NOEL of 10,000 ppm, approximately 250 mg/kg/day (highest dose tested).

d. A mouse developmental toxicity study with a NOEL for maternal and developmental toxicity at 2,100 mg/kg (highest dose tested).

e. A dog study, undertaken to evaluate antimicrobial resistance to oxytetracycline, with a NOEL of 2 ppm (approximately 0.05 mg/kg/day).

In December of 1988, EPA completed a review of the available data for oxytetracycline and concluded that there is no evidence of carcinogenic effects in either the mouse or the rat study.

The reference dose (RfD) is established at 0.005 mg/kg/body weight per day based on a NOEL of 0.05 mg/kg body weight per day from the dog feeding study. An uncertainty factor of 10 to account for intraspecies variability was used.

The theoretical maximum residue contribution (TMRC) from existing tolerances is 0.000268 mg/kg/day; the proposed increase in the tolerance would contribute 0.000054 mg/kg/day. Existing tolerances and the proposed increase to the tolerance on peaches would utilize 5.35 percent of the RfD. The most highly exposed subgroup, non-nursing infants (less than 1 year old), had a TMRC of 0.001391 mg/kg/day, utilizing 27.81 percent of the RfD. The Agency believes that exposure at these levels carries no appreciable risk.

The nature of the residue is adequately understood and an adequate analytical method, a microbiological assay, is available for enforcement purposes.

2. *Proposed action.* Based on the data and information presented above, the Agency is proposing that the tolerance for peaches be increased from 0.1 to 0.35 ppm. In proposing this action, EPA believes that the tolerance level of 0.35 ppm for oxytetracycline residues in or on peaches is protective of the public health.

#### C. Amendment to 40 CFR 180.232

1. *Background.* EPA has determined, as explained in the Reregistration Eligibility Document issued September 1993, that there are sufficient data to support the adequacy of the established S-ethyl diisobutylthiocarbamate tolerances listed in 40 CFR 180.232.

2. *Proposed action.* By this document, EPA proposes the following actions:

a. Amend the name S-ethyl diisobutylthiocarbamate in 40 CFR 180.232 to the common name "Butylate" so that the tolerance regulation may be more easily located.

b. Delete the term "negligible residues" in the tolerance entry because the regulation specifies a tolerance level.

c. Amend the commodity definitions listed in 40 CFR 180.232 to read as follows to conform to commodity definitions currently used by EPA:

i. "Corn grain (including popcorn)" is proposed to be revised to "Corn, field, grain" and "Corn, pop, grain."

ii. "Fresh corn including sweet corn (kernels plus cob with husk removed)" is proposed to be revised to "Corn, sweet (kernels plus cob with husk removed)."

iii. "Corn forage and fodder including sweet corn, field corn, and popcorn" is proposed to be revised to "Corn, field, fodder"; "Corn, field, forage"; "Corn, pop, fodder"; "Corn, pop, forage"; and "Corn, sweet, forage."

#### III. Public Comment Procedures

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by May 19, 1995. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under the ADDRESSES unit of this preamble.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of a comment that does not contain CBI must be submitted for

inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this proposal be referred to an Advisory Committee in accordance with section 408(e) of the FFDCa.

Documents considered and relied upon by EPA pertaining to this action, and all written comments filed pursuant to this proposed rule, will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA between 8 a.m. and 4 p.m., Monday through Friday, except public holidays. Any person who has registered, or who has submitted an application for registration under FIFRA of any of the pesticide chemicals listed in this proposed rule, may request that this proposal be referred to an advisory committee. Such a request must be made within 30 days of the publication of this proposal. To satisfy requirements for analysis specified by Executive Order 12866 and the Regulatory Flexibility Act, EPA has analyzed the impacts of this proposal. This analysis is available for public inspection in Rm. 1132 at the Virginia address given above.

#### IV. Regulatory Assessment Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or

policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not a "significant regulatory action," because it does not meet any of the regulatory-significance criteria listed above.

##### B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 [Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.] and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

##### C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 7, 1995.

**Peter Caulkins,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

#### PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.232 is revised to read as follows:

##### **§ 180.232 Butylate; tolerances for residues.**

Tolerances are established for the herbicide butylate in or on the raw agricultural commodities corn, field, grain; corn, pop, grain; corn, sweet (kernels plus cob with husk removed); corn, field, fodder; corn, field, forage; corn, pop, forage; and corn, sweet, forage at 0.1 part per million.

3. Section 180.337 is revised to read as follows:

**§ 180.337 Oxytetracycline; tolerances for residues.**

Tolerances are established for residues of the pesticide oxytetracycline in or on the following raw agricultural commodities:

Commodity	Parts per million
Peaches	0.35
Pears	0.35

4. Section 180.1068 is revised to read as follows:

**§ 180.1068 C<sub>12</sub>-C<sub>18</sub> fatty acid potassium salts; exemption from the requirement of a tolerance.**

C<sub>12</sub>-C<sub>18</sub> fatty acids [saturated and unsaturated] potassium salts are exempted from the requirement of a tolerance for residues in or on all raw agricultural commodities when used in accordance with good agricultural practice.

[FR Doc. 95-9534 Filed 4-18-95; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Maritime Administration****46 CFR Part 382**

[Docket No. R-158]

RIN AB19

**Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Preference Cargoes on U.S.-flag Commercial Vessels**

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Advance Notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration is soliciting comments from interested persons concerning the need for and content of a revised methodology for the determination of fair and reasonable rates. Fair and reasonable rate determinations are provided to U.S. government shippers of preference cargo, thereby creating ceiling rates which limit government costs and the revenue U.S.-flag operators receive for ocean cargo transportation.

**DATES:** Comments must be received before June 19, 1995.

**ADDRESSES:** Comments should be sent to the Secretary, Maritime Administration, room 7210, 400 7th St. SW., Washington DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Ferris, Director Office of

Costs and Rates, Maritime Administration, Washington, DC 20590, Telephone (202) 366-2324.

**SUPPLEMENTARY INFORMATION:** Section 901(b) of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. § 1241(b), cited as the Cargo Preference Act of 1954, requires that, with respect to certain cargoes which are described as "government-impelled," such as food donation programs administered by the State Department or the Department of Agriculture, the cognizant government agency or agencies must take appropriate steps to assure that at least 50 percent of the gross tonnage of such cargoes transported on ocean vessels will be "transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at *fair and reasonable rates* for United States-flag vessels" (emphasis added). Section 901b of the Food Security Act of 1985 increased the 50 percent carriage requirement to 75 percent for agricultural commodities or products shipped under certain food donation programs. In 1989, MARAD issued regulations (46 CFR Part 382, hereafter the Rule) that initially became effective on January 1, 1990. The Rule contains regulations that govern the calculation of *fair and reasonable rates* (also referred to as guideline rates) for the carriage of bulk and packaged preference cargoes on U.S.-flag commercial vessels.

In an effort to encourage the development of a modern and efficient U.S.-flag bulk fleet and to help lower government-wide cargo preference program costs, the Maritime Administration is considering changes in its methodology for the determination of fair and reasonable rates. The Rule prescribes a methodology for determining fair and reasonable rates based on individual vessel costs. As a result, during periods of strong demand for bulk shipping, certain high cost vessels have been able to fix cargoes at rates that significantly exceed those of more efficient vessels. This poses a question of equity between the operators of these two groups of vessels and raises the possibility that under an alternative methodology government program costs could be reduced. Additionally, a possible result of the existing Rule is that modern, efficient low cost vessels are discouraged from entering the trade. The lower ceiling rates imposed on the most cost efficient vessels by the current methodology may not allow sufficient profit opportunities to justify the risk of a high capital cost investment.

MARAD is considering whether to conduct a rulemaking with respect to

the present methodology for determining fair and reasonable rates and is seeking information from the public as to an appropriate methodology to encourage efficient vessels to enter the trade resulting in lower program costs. MARAD has identified three alternative methodologies which it might consider as part of a rulemaking. In addition, the option exists of keeping the present methodology. The methodologies are:

**Individual Cost (Existing)**

The existing Rule is based on a methodology which utilizes an owner's actual costs for owning and operating the specific vessel used in the transportation of the preference cargo. Those costs are prorated over the cargo preference voyage and added to the voyage and cargo related costs. An allowance for overhead and profit is also included in the guideline rate.

**Foreign Market Differential**

Under this methodology, MARAD would calculate the added costs associated with owning and operating a vessel under the U.S.-flag resulting from U.S. laws and regulations and the U.S. standard of living. This procedure would identify a modern and efficient target vessel or vessels available worldwide and estimate its cost under foreign ownership and under U.S. ownership, if operated in the most efficient manner practical. The resulting cost differential would be prorated over specific voyages, as cargoes are tendered, and added to the foreign bids for such voyages to determine the fair and reasonable rate for U.S.-flag operators.

**Cost Averaging**

A methodology utilizing vessel cost averaging would be constructed in much the same manner as the current Rule, except that some level of average vessel costs would replace individual vessel costs in the calculation of the fair and reasonable rate. There are three basic cost areas which would be the most likely candidates for averaging: vessel operating costs, vessel capital costs, and fuel. Any one or a combination of any of the three cost areas could be included in a cost averaging methodology.

**Market Based**

Under a market based methodology, an operator's bid would be considered fair and reasonable if it were submitted in a competitive environment. A competitive environment would be established by a required number of qualified bids made by independent and